in this case, it was alleged, entered the mine through a drift mouth when he should have entered through a manway provided for all employees; but as there was evidence for the jury on the question, of whether or not the roof of the manway was safe, the court could not say that another "good road" was provided and hence that the employee was guilty of contributory negligence. In this connection it was also held that the employee had not gone into the mine to "travel on foot" as there was evidence to show a custom, whether or not authorized and sanctioned by the employer being a question for the jury, of employees going in at this point and riding in on the cars.

Nuisance—Undertaking Establishment.—The Supreme Court of Michigan has held that an injunction would be granted at the suit of property owners against the maintenance of an undertaking establishment, including a morgue, on one of the residence streets of a city. It was conceded that such an establishment is not a nuisance per se, but that it would constitute one under the circumstances and in the locality in question. The opinion (Saier *v.* Joy, 164 N. W. 507), concludes:

"We do not overlook the contention of the defendants that the writ of injunction is not one of right but of grace. It should not issue out of hand, but should issue in cases where the right to such relief is clearly established. Such we find this case to be. We have here a case of the maintenance of a business which, while not a nuisance per se, is such as to these plaintiffs by reason of its location in a strictly residential district—a business which will cause depression to the normal person, lowering his vitality, rendering him more susceptible to disease, and depriving his home of the comfort, repose, and enjoyment to which he is entitled. Coupled with this is the substantial financial loss, due to the depreciation in the value of his property, and the strong probability that added to the other discomforts he will be called upon to suffer will be noxious odors during the summer months. Such a case appeals to the conscience and discretion of the court, and calls for injunctive relief."

Principal and Surety—Liability of Surety—Illegal Contract.—In Basnight *v.* American Mfg. Co., in the Supreme Court of North Carolina (October, 1917, 93 S. E. 734), it was held that where a manufacturing company made with the proprietor of a drug store a contract to increase the store's business which was violative of a statute against lotteries and gift enterprises, the manufacturing company's surety was not liable to the proprietor of the drug store for the manufacturing company's breach of the illegal contract on the ground that the proprietor of the store having been induced to part with his money by reason of the surety's indorsement the latter was

estopped from maintaining the defense of illegality in the principal contract. The opinion concludes:

"We do not make more extended reference to this plan sold to plaintiff and not inaptly termed a 'trade expansion scheme' for the reason that it cannot be distinguished in any essential particular from one of a very similar kind presented for our consideration in the recent case of Brevard Manufacturing Co. *v.* W Benjamin Sons (172 N. C. 53, 89 S. E. 797), and which was there held to be in violation of our statute against lotteries and gift enterprises (Revisal, sec. 3726), and contrary to our public policy to which this statute gives expression.

"Plaintiff does not seriously argue that the present contract in its terms and meaning it not within the application of the decision referred to, but contends that the principle should not be allowed to prevail in this instance because the suit being against the surety only, and it appearing that plaintiff had been induced to part with his money by reason of the indorsement of the surety, the latter should estopped from maintaining this defense, but such a position cannot for a moment be allowed. The bond signed by the present defendant guaranteeing due performance of the contract and attached to and made a part of it is in direct aid of the illegal agreement, and recovery on it can no more be upheld than on the contract itself. This position of a contract by estoppel or recoveries by reason of such a principle and more usually presented in contracts by corporations and their agents is sometimes sustained when the impeaching facts have reference to the capacity of the parties to make the contract, but so far as we are aware the position is never allowed to prevail when the agreement itself is essentially vicious or contrary to public policy or express provisions of the statute law. In such case the doctrine of estoppel is not recognized and no recovery can be had in the courts either against principal or surety (Brown *v.* Bank, 137 Ind. 655, 37 N. E. 158, 24 L. R. A. 206; McCanna & Fraser *v.* Citizens Trust Co., 76 Fed. 420, 24 C. C. A. 11, 35 L. R. A. 236; County of Keith *v.* Power Co., 64 Neb. 35, 89 N. W. 375; Bigelow on Estoppel, 6th ed., 497; Brant on Suretyship, sec. 19; Bead on Contracts, sec. 1499).

"In Brown's Case (supra) it was held among other things that:

"'A person who has derived benefit from a contract which is void, as against public policy, is not estopped thereby to defend against such a contract when it is sought to be enforced against him.'

"And in Brant on Suretyship (3d ed., sec. 19):

"'It is essential to the contract of suretyship that there be a contract or obligation on the part of the principal to which the contract of suretyship is collateral If there is no principal contract, or if the principal contract is void as against public policy, etc., there can be no contract of suretyship.'"